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Attorneys for Defendant
PACIFIC BELL TELEPHONE COMPANY

**UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA**

CALIFORNIA SPORTFISHING
PROTECTION ALLIANCE.

Plaintiff,

v.

PACIFIC BELL TELEPHONE COMPANY

Defendant.

CASE NO. 2:21-cv-00073-JDP

**DECLARATION OF JON DAVID
KELLEY IN SUPPORT OF PACIFIC
BELL'S OPPOSITION TO BELOW
THE BLUE'S "ADMINISTRATIVE"
MOTION FOR EXTENSIONS OF
TIME AND FOR "TOLLING"**

Magistrate Judge Hon. Jeremy D. Peterson

Complaint Filed: January 14, 2021

1 I, Jon David Kelley, hereby declare as follows:

2 1. I am a partner at the law firm of Kirkland & Ellis LLP and counsel for Defendant Pacific
3 Bell Telephone Company (“Pacific Bell”) in the above-captioned litigation. I submit this declaration in
4 support of Pacific Bell’s Opposition to Below the Blue’s (“BtB”) “Administrative” Motion for
5 Extensions of Time and for “Tolling.” I have personal knowledge of the facts set forth herein and, if
6 called as a witness, I could and would testify competently thereto.

7 2. On November 24, counsel for Pacific Bell received an email from an attorney named
8 Joshua Koltun, who identified himself as counsel for BtB, Seth Jones, Monique Fortner, and Marine
9 Taxonomic Services, Ltd. A true copy of Mr. Koltun’s November 24 email is attached as **Exhibit A**.

10 3. On November 28, Mr. Koltun served a single set of responses and objections to Pacific
11 Bell’s subpoena on behalf of BtB, Seth Jones, Monique Fortner, and MTS. A true copy of these
12 responses and objections is attached as **Exhibit B**.

13 4. On November 29, counsel for Pacific Bell conferred with BtB’s counsel, and Mr. Koltun
14 acknowledged that his fees were being paid by Dow Jones—the parent company of the Wall Street
15 Journal (“WSJ”).

16 5. During the November 29 meet and confer, BtB’s counsel acknowledged that BtB entered
17 into a written agreement with Environmental Defense Fund (“EDF”) in early 2022.

18 6. Counsel for BtB also represented that BtB entered into an oral agreement with the WSJ in
19 2022, whereby Seth Jones and Monique Fortner of BtB allegedly agreed to act as reporters for the WSJ
21 in connection with its series on lead-clad cables.

22 7. Mr. Koltun asserted that BtB was therefore entitled to assert the reporter’s privilege, and
23 that he intended to assert this privilege in a motion for reconsideration of the Court’s November 9
24 decision to be filed on December 14.

1 8. During the November 29 meet and confer, Mr. Koltun conceded that EDF had waived
2 any reporter's privilege.

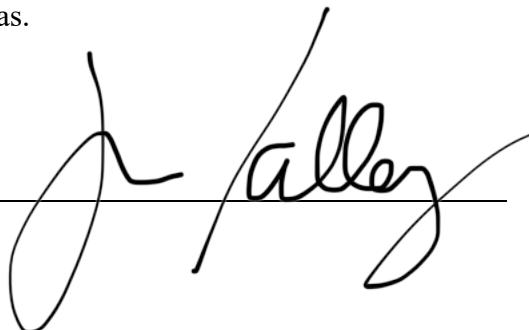
3 9. Counsel for Pacific Bell asked about BtB's compliance with the Court's Order and
4 whether BtB would produce documents by November 30 as required. Mr. Koltun responded that he had
5 not yet collected any documents from BtB.
6

7 10. BtB failed to produce a single document by the November 30 Court-ordered deadline.

8 I declare under penalty of perjury under the laws of the United States that the foregoing is true and
9 correct.
10

11 Executed December 4, 2023, in Dallas, Texas.
12

13 By: _____

A handwritten signature in black ink, appearing to read "Kelley", is written over a horizontal line. To the left of the line, the word "By:" is printed in a standard font.